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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

CCO/141143

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 24, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on October 18, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of child care (CC) benefits from the Petitioner in the amount of \$2,137.17 for the period of May 1, 2011 – March 31, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner and her boyfriend JA reside together and have a two year old child for whom they received child care benefits during the period of May 1, 2011 – November, 2011.

3. Employment verifications were submitted to the agency from JA's employer on April 28, 2011 and March 25, 2012 indicating that JA is employed 40 hours/week at a rate of \$9/hour. The verifications also indicate that JA's employment with the employer commenced March, 2008.
4. On April 10, 2012, JA's employer submitted a statement to the agency indicating that JA is paid his earned income in cash. The statement was signed April 2, 2012 by the employer.
5. On May 15, 2012, the agency issued a Notice of Overpayment and overpayment worksheets to the Petitioner notifying her that the agency intends to recover an overpayment of \$2,137.17 in CC benefits for the period of May 1, 2011 – March 31, 2012 because JA was not employed by a "qualified employer."
6. On May 24, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.
7. A hearing was scheduled for August 21, 2012 with the Division of Hearings and Appeals. The Petitioner did not appear. The appeal was accordingly dismissed on August 22, 2012. The Petitioner filed a request for a rehearing on September 4, 2012. The request for a rehearing was granted on September 10, 2012 by the Division of Hearings and Appeals.

### DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

In order to receive CC benefits, both parents must be involved in W-2 approved activities. Unsubsidized employment is a W-2 approved activity if the employer is a "qualified employer." Wisconsin Shares Child Care Assistance Manual § 1.5.3.

A "qualified employer" is defined in the Manual at § 1.5.3.1:

All qualified employers must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete. If the FEIN is already on file on the Employment Page or the worker knows the FEIN for the employer, the employer does not have to re-verify the number unless the worker believes that the FEIN is incorrect.

Incorrect FEINs are considered incomplete verification (See Section 1.3.4 Missing Verification for incomplete verification steps for new applicants, Program Adds, SMRFs and Reviews.)

If the employer is a child care provider or a business owned or managed by the provider, or if the reported employment appears to be questionable, the following employer items must be verified. Please refer to the Appendix for suggested verification steps.

*The employer must have a Worker's Compensation insurance policy for its employees.*

The employer must comply with Wisconsin minimum wage law for all employees.

*The employer must file a New Hire report on the employee within thirty days of the hiring date.*

*The employer must report wages to Unemployment Insurance unless exempt.*

(Emphasis added). Wisconsin Shares Child Care Assistance Manual § 1.5.3.1; W-2 Manual 15.2.0.; See also, Wis. Stat § 49.155(1m)(a); Wis. Admin. Code § DCF 101.26; Wis. Admin. Code § DCF 201.04(5)(a)2.b.

The agency seeks to recover an overpayment of the CC benefits issued to the Petitioner on the grounds that JA's employer was not a "qualified employer" as required by the Wisconsin Shares program to receive CC benefits. The agency testified that it was not aware at the time of the Petitioner's application and subsequent reviews that JA was paid in cash and that JA is a non-qualifying alien with no Social Security number. It was not aware that his employer did not file a New Hire report, did not report wages to Unemployment Insurance and did not have a Worker's Compensation policy for JA. The agency commenced the overpayment action when it discovered this information in April, 2012.

The Petitioner did not dispute that JA does not work for a "qualified employer." Her argument at the hearing was that she was not asked if JA was paid in cash and was not aware that the employer was not qualified. She was also told that she was eligible for CC benefits.

It is clear that the Petitioner did not intentionally mislead the agency regarding JA's employment. I find the Petitioner's testimony to be credible that she was not aware that JA's employer was not "qualified."

However, the agency must recover any overpayments even if they are the result of an unintentional error. I have reviewed the agency's evidence and the overpayment worksheets. I conclude, based on the evidence, that the agency properly seeks to recover an overpayment of \$2,137.17 from the Petitioner for CC benefits she received from May, 2011 - November, 2011. I note that the period of recovery indicated by the agency is May, 2011 – March 30, 2012. According to the overpayment worksheets, no CC benefits were issued to the Petitioner from December, 2011 – March 30, 2012.

I note, as dicta, that if the Petitioner wishes to work out a repayment schedule, she should contact the agency to do so.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover CC benefits issued to the Petitioner for the period of May, 2011 – March 30, 2012 in the amount of \$2,137.17.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

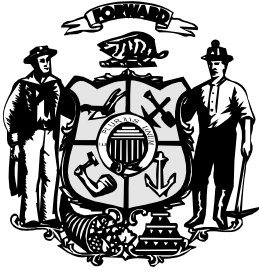
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 31st day of October, 2012

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Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

c: Public Assistance Collection Unit, DWSPACU@wisconsin.gov - DWSPACU@wisconsin.gov  
Child Care Fraud, dcfmchildcarefraud@wisconsin.gov - dcfmchildcarefraud@wisconsin.gov  
WGRP.FairHearings@kenoshacounty.org, WGRP.FairHearings@kenoshacounty.org - Kenosha County



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 31, 2012.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Child Care Fraud